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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 05-44481-rdd

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In the Matter of:

DPH HOLDINGS CORP., ET AL.,

Reorganized debtors.

- - - - -x

U.S. Bankruptcy Court  
300 Quarropas Street  
White Plains, New York

June 30, 2010  
10:18 AM

B E F O R E:  
HON. ROBERT D. DRAIN  
U.S. BANKRUPTCY JUDGE

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Notice of Hearing Proposed Fifty-Sixth Omnibus Hearing Agenda

Notice of Hearing Thirty-Fourth Claims Hearing Agenda

Transcribed by: Dena Page

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P R O C E E D I N G S

THE COURT: DPH Holdings.

MR. MEISLER: Good morning, Your Honor. Ron Meisler of Skadden Arps on behalf of DPH Holdings and its affiliated reorganized debtors. Your Honor, we have an omnibus hearing and a claims hearing scheduled for today, and with the Court's permission, we'd like to first proceed with the claims hearing.

THE COURT: That's fine.

MR. MEISLER: Your Honor, to proceed with the claims hearing, I'm going to cede the podium to my colleague, Brandon Duncomb who will take us through the claims hearing and the agenda.

THE COURT: Okay.

MR. DUNCOMB: Good morning, Your Honor. Brandon Duncomb from Skadden, also on behalf of the reorganized debtors.

We had nine claims up for today's hearing, all on a sufficiency basis. Of these, the first eight all relate to workers' compensation obligations. We originally noticed fifteen for the hearing and seven of those have been adjourned. Of the seven (sic) that remain, no responses have been filed.

It probably makes sense to just walk you through some of these sufficiency objections.

THE COURT: Yeah, why don't we go through them in order?

1 MR. DUNCOMB: So I gave you a binder that looks like  
2 this. It says sufficiency hearing, workers' compensation  
3 claims.

4 THE COURT: Okay.

5 MR. DUNCOMB: For the first six of these, our basis  
6 was just that they didn't properly assert an administrative  
7 claim. And for each of these first six tabs, there's three  
8 documents, the first being a proof of claim, the second being  
9 the response, and the third is --

10 THE COURT: Right.

11 MR. DUNCOMB: -- additional documentation from the  
12 reorganized debtors that we're not really relying on, but we  
13 just confirmed from our records that these were all  
14 prepetition. So if you look at the --

15 THE COURT: Okay, well, so -- and these documents were  
16 also part of the objection -- I'm sorry, part of the objection  
17 and also there were statements in the responses that confirmed  
18 the basis for the objections. So I reviewed this already.  
19 With regard to Ms. Robinson, she acknowledges the claim's a  
20 prepetition claim, so it's clearly not an administrative claim.

21 MR. DUNCOMB: That's right, Your Honor.

22 THE COURT: So that objection is granted to the  
23 administrative claim.

24 MR. DUNCOMB: Thank you, Your Honor. So then --

25 THE COURT: Mr. Stasik, Robert Stasik's the same way,



1 so the administrative claim should be disallowed. He's filed a  
2 similar claim as a prepetition unsecured claim, and that's not  
3 affected by this.

4 MR. DUNCOMB: That's right; that's secured.

5 THE COURT: Okay. I guess the next one is Ms. Hatch,  
6 Janice Hatch. Again, that's -- she confirms in her response  
7 that it was a prebankruptcy injury that gave rise to her claim,  
8 so the administrative claim should be disallowed.

9 Mark Odette is the same as Ms. Hatch. He has a  
10 prepetition claim and the admin claim should be disallowed.

11 That's the same for Ms. Reid, Sheila Reid. Her injury  
12 is prepetition as she acknowledges.

13 Now, the Lyons', that's based on a settlement. The  
14 settlement is recognized, right?

15 MR. DUNCOMB: The Lyons' is not the settlement. The  
16 Lyons' is the same basis as the other one. Ms. Hooker is the  
17 one where there's a --

18 THE COURT: Oh, I'm sorry.

19 MR. DUNCOMB: -- there's a settlement.

20 THE COURT: I'm sorry.

21 MR. DUNCOMB: And so Lyons, she asserted it as  
22 executrice to her husband's estate --

23 THE COURT: Right.

24 MR. DUNCOMB: -- but it's the same basis.

25 THE COURT: But it's a prepetition -- prepetition

1 injury.

2 MR. DUNCOMB: That's right, in 2000. And she still  
3 has a prepetition claim --

4 THE COURT: Right.

5 MR. DUNCOMB: -- that's adjourned.

6 THE COURT: Now, Ms. Hooker is based on a settlement,  
7 a prepetition settlement.

8 MR. DUNCOMB: And this claim was filed by Mr. Spencer  
9 E. Gilbert (ph.) on behalf of the Mississippi Guaranty  
10 Association as a protective objection, and I sent him a copy of  
11 the settlement. And I don't know if he's here on the phone  
12 today, but after I sent him the settlement which has a full  
13 release, he said I could represent to you that he has no  
14 objection to this one being disallowed.

15 THE COURT: Right. So based on that, I'll grant that  
16 objection as well.

17 MR. DUNCOMB: And the final one was Mr. Dashkowitz.

18 THE COURT: Right.

19 MR. DUNCOMB: And if you looked at his response, it's  
20 the second one back.

21 THE COURT: Right, he acknowledges that his claim,  
22 also, is prepetition.

23 MR. DUNCOMB: And that it was his only -- it was his  
24 intention to file only one claim.

25 THE COURT: Right, so I have not looked at the two

1 claims. The -- I'm assuming there's no difference, truly,  
2 between them.

3 MR. DUNCOMB: There may be a difference in the  
4 asserted debtor. I don't remember; one may be Delphi Corp. and  
5 DOS LLC (ph.).

6 THE COURT: Oh, right, right, right.

7 MR. DUNCOMB: But now that we've merged them, they've  
8 been subsequently consolidated. It's the same basket that --

9 THE COURT: So it doesn't matter.

10 MR. DUNCOMB: Right.

11 THE COURT: But as far as the amount, it's the same.

12 MR. DUNCOMB: That's right, Your Honor.

13 THE COURT: So that one claim will be allowed and the  
14 other one will be disallowed as duplicative.

15 MR. DUNCOMB: Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. DUNCOMB: And then the last claim left today is  
18 Alegre.

19 THE COURT: Right.

20 MR. DUNCOMB: Alegre had originally -- were objecting  
21 to administrative claim 18727. Originally, Alegre had filed  
22 proof of claim 12363 which asserted the exact same reclamation  
23 claim that's now asserted in 18727. That was a reclamation  
24 claim for \$190,941.71. We objected, and there was also an  
25 unsecured portion to that, just under 230 million. We objected

1 to that in connection with our twenty-fourth omnibus objection.  
2 It was ordered modified subject to our right to further  
3 objection which included our right to a certain prior lien  
4 defense. And then, per the Court's order, in connection with  
5 the order of determining reclamation claims, the entire  
6 amount's treated as unsecured. And so what we're left with is  
7 proof of claim 12193 modified to --

8 THE COURT: Well, as --

9 MR. DUNCOMB: -- both portions have been unsecured,  
10 the \$20,154.39 and the 2.19 million.

11 THE COURT: As provided by my prior order.

12 MR. DUNCOMB: That's right.

13 THE COURT: I didn't see any response to the objection  
14 by Alegre.

15 MR. DUNCOMB: No.

16 THE COURT: You haven't gotten any, or? Okay. The  
17 objection puts the burden on them to show why the prior order  
18 isn't res judicata with regard to this present claim, claim  
19 18727. And given that there's no response to the objection and  
20 the averments to the objection, I'll grant the objection and  
21 disallow 18727.

22 MR. DUNCOMB: Thank you, Your Honor.

23 THE COURT: And that's --

24 MR. DUNCOMB: And that's the last claims matter for  
25 today.

1 THE COURT: Okay. So do you have an order covering  
2 those?

3 MR. DUNCOMB: We'll submit orders after the hearing.

4 THE COURT: Fine, thank you.

5 MR. DUNCOMB: Thanks.

6 MR. TULLSON: Good morning, Your Honor. Carl Tullson  
7 on behalf of the reorganized debtors. As a preliminary matter,  
8 I have a pending pro hac motion at docket number 20272.

9 THE COURT: You should consider that granted.

10 MR. TULLSON: All right. Your Honor, that concludes  
11 our claims hearing, and we are now ready to commence the  
12 omnibus hearing.

13 THE COURT: Okay, that's fine.

14 MR. TULLSON: We filed an agenda yesterday and with  
15 this Court's permission, we would like to proceed in the order  
16 of the agenda.

17 THE COURT: Okay.

18 MR. TULLSON: The first two matters, Furukawa's motion  
19 for allowance of administration claims and Highland's  
20 substantial contribution application have both been adjourned.

21 THE COURT: Okay, is there -- on Highland I know there  
22 was some back and forth with letters to chambers about  
23 scheduling matters, and then we were told -- I had scheduled a  
24 conference, but then it was resolved?

25 MR. TULLSON: Yes, Your Honor.

1 THE COURT: The scheduling and the issues were  
2 resolved?

3 MR. TULLSON: For Highland -- for Highland we  
4 submitted an order to chambers that is pending your approval  
5 and entry.

6 THE COURT: Okay, fine.

7 MR. TULLSON: The next matter on the agenda is the  
8 motion to enforce the plan injunction against Leigh Ochoa.

9 THE COURT: Leigh Ochoa?

10 MR. TULLSON: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. TULLSON: The reorganized debtors brought this  
13 motion to enforce the injunction containing the modified plan  
14 and modification approval order to enjoin the litigation  
15 associated with the action commenced by Leigh Ochoa against the  
16 reorganized debtors on November 6, 2009 -- I will refer to that  
17 as non-bankruptcy company -- in the U.S. District Court for the  
18 Eastern District of Michigan, Northern Division, case number  
19 09-14383-TLO, asserting that Delphi Corporation improperly  
20 terminated Ms. Ochoa to interfere with her alleged entitlement  
21 to long-term disability benefits.

22 Your Honor, no objections were filed to this motion,  
23 and the motion was served on Leigh Ochoa and her counsel in the  
24 Michigan action, and that proof of service is at docket number  
25 20235. However, as a preliminary update on the proceedings in

1 the Michigan action, counsel for Ms. Ochoa, on June 18th,  
2 subsequent to filing a motion, did file a motion to amend the  
3 complaint in the Michigan district court. In the motion to  
4 amend the complaint, Ms. Ochoa seeks to amend the complaint  
5 against DPH Holdings by adding Ms. Ochoa's former supervisors,  
6 Jim Miller and Kerry Baskins, as defendants and including a  
7 claim that they conspired with General Motors to terminate  
8 Ochoa in violation of ERISA.

9 THE COURT: With General Motors?

10 MR. TULLSON: Yes.

11 THE COURT: Okay.

12 MR. TULLSON: In the Michigan action, Ms. Ochoa  
13 asserts damages --

14 THE COURT: But they haven't dismissed Delphi?

15 MR. TULLSON: No.

16 THE COURT: Okay.

17 MR. TULLSON: They just added an additional complaint.

18 THE COURT: Okay.

19 MR. TULLSON: Additional counts.

20 In the Michigan action, Ms. Ochoa asserts damages  
21 relating from the termination of her employment with Delphi  
22 Corporation which occurred on or before August 24th, 2009.  
23 Because Ms. Ochoa's claims were based on alleged pre-effective  
24 date actions committed by Delphi Corporation, the injunction  
25 contained in paragraph 22 of the Court's modification approval

1 order and in Section 11.14 of the modified plan stays Ms.  
2 Ochoa's cause of action against the reorganized debtors.  
3 Moreover, Ms. Ochoa has not filed a timely administrative  
4 expense claim, and accordingly, any such claims would be  
5 automatically disallowed pursuant to paragraph 47 of the  
6 modification approval order.

7 Your Honor, as we discussed in our papers, Ms. Ochoa  
8 has refused to dismiss or stay the Michigan action despite  
9 being served with a notice of effective date and being notified  
10 that continuing the Michigan action violates the plan  
11 injunction. The reorganized debtors have a profound interest  
12 in making sure that the unambiguous provisions of the modified  
13 plan and modification approval order are enforced, and  
14 therefore, request this Court enjoin Ms. Ochoa from proceeding  
15 in the Michigan action and direct Ms. Ochoa to take such action  
16 as is necessary to dismiss the Michigan action.

17 Your Honor, the bar dates established by this Court's  
18 orders for asserting administrative expense claims were July  
19 15th, 2009 for claims arising through June 1st, 2009, and  
20 November 5th, 2009, for claims arising through October 6th,  
21 2009, the effective date.

22 As far as the procedural history, despite these bar  
23 dates, Ms. Ochoa filed the Michigan action on November 6th  
24 without either filing an administrative expense claim in the  
25 Chapter 11 cases or seeking leave of this Court to lift the



1 plan injunction. She did so despite the fact that she and the  
2 lawyer she retained to file the Michigan action collectively  
3 receive some forty-eight notices of these bar date procedures.  
4 On November 19th, 2009, Ms. Ochoa filed the amended non-  
5 bankruptcy complaint in the Michigan District Court naming DPH  
6 Holdings as the defendant, rather than Delphi Corporation. In  
7 the non-bankruptcy complaint, she seeks damages against the  
8 reorganized debtors in association with her termination and  
9 their alleged violation under 29 U.S.C. Section 1140.

10 THE COURT: Has the Michigan District Court been asked  
11 to rule on whether either my prior orders or the discharge bars  
12 the lawsuit?

13 MR. TULLSON: Well, jumping ahead, on June 1st, we did  
14 file reply -- we filed a motion to stay, and on June 1st, we  
15 filed a reply in support of that motion --

16 THE COURT: Right.

17 MR. TULLSON: -- explaining to the Michigan District  
18 Court, this district, that the Court retained jurisdiction to  
19 interpret its own orders and that that motion would be filed in  
20 the bankruptcy court so that it could be heard on June 30th,  
21 2010. The District Court has not ruled on that motion.

22 THE COURT: It has not ruled. Is it slated to rule?

23 MR. TULLSON: There -- the last update I saw was that  
24 there was a conference scheduled for August 2nd.

25 THE COURT: Okay. All right. I didn't see any

1 response to this. Did you get any?

2 MR. TULLSON: There was not.

3 THE COURT: Fine. The -- I don't see how the bar date  
4 particularly affects this except on the merits, but as far as  
5 the procedural issue of whether the litigation should proceed  
6 against the debtor, and for that matter the debtors' former  
7 officers or managers, it's clearly bound not to go forward by,  
8 in the first instance, the continuation of the automatic stay  
9 through the effective date, and then the plan injunction and/or  
10 524. So it's clearly a violation of the confirmation order and  
11 the injunction. They're already enjoined. I will grant the  
12 request for an additional injunction, but it's only to further  
13 the -- or, to enforce, rather, the existing injunction and the  
14 discharge. And it seems to me that continued prosecution of  
15 the litigation will result in sanctions.

16 MR. TULLSON: Yes, Your Honor, and we included that in  
17 the proposed order that was submitted to chambers --

18 THE COURT: Right.

19 MR. TULLSON: -- ordering them to dismiss the action  
20 and saying that further prosecution of the action, including  
21 the amended complaint, would subject them to contempt of court.

22 THE COURT: Right. You're not -- as I read it, you're  
23 not looking for monetary sanctions for what you -- for this  
24 motion, right?

25 MR. TULLSON: That's correct, Your Honor.

1 THE COURT: Okay, and of course, I think you'd be  
2 entitled to, but that wasn't requested so I won't grant it.  
3 But I will grant the request for the provision of the order  
4 that provides for appropriate sanctions for any continued  
5 violation of the confirmation order, specifically the plan  
6 injunction and, with regard to the debtor, the discharge.

7 MR. TULLSON: Thank you, Your Honor.

8 THE COURT: All right.

9 MR. TULLSON: Our local counsel will file a copy of  
10 that order, once it's entered, in the district court.

11 Your Honor, the first contested matter on today's  
12 agenda is the reorganized debtors' forty-eighth omnibus claims  
13 objection at docket number 49976. This objection is a bit  
14 unique because it does not relate to proofs of claim, but  
15 rather, it covers motions or requests for payment of  
16 administrative expenses, they were not filed on a docket in  
17 these cases and which were not previously resolved. In advance  
18 of the May 4th, 2010 deadline to object to administrative  
19 claims, the reorganized debtors identified certain motions or  
20 requests for payment of administrative expense claims that have  
21 not been resolved. Certain of these motions are duplicates of  
22 other administrative expense claims already subject to the  
23 claims procedures, and other motions are requests that are not  
24 supported by the reorganized debtors' books and records. Out  
25 of an abundance of caution, the reorganized debtors filed a

1 forty-eighth omnibus objection to the administrative claims  
2 asserted in the motion and request.

3 Your Honor, there were originally nine motions in this  
4 omnibus objection. Two motions, one filed by CSX Transport at  
5 docket number 16548 and the other by Computer Sciences  
6 Corporation at docket number 16601, have been resolved by  
7 stipulation. The CSX stipulation was entered at docket number  
8 20243 and the computer sciences stipulation was submitted to  
9 chambers yesterday.

10 In addition, pursuant to the notice of adjournment  
11 found at docket number 20249, the reorganized debtors have  
12 agreed with Furukawa Electric Company to adjourn the hearing on  
13 the forty-eighth omnibus objection to July 22nd, 2010, solely  
14 with respect to the two motions filed by Furukawa.

15 Your Honor, of the five remaining motions, two motions  
16 was filed by ATEL Leasing Corp. in Appaloosa (ph.) County were  
17 covered by two responses which we are asking to be adjourned in  
18 accordance with the claims procedures.

19 This results in a total of three motions on the  
20 proposed order which was submitted to Your Honor that will be  
21 expunged. The administrative expense claims asserted in the  
22 three motions to be expunged total approximately 92,000 in the  
23 aggregate, plus certain unliquidated amounts.

24 Your Honor, I believe that this is the level of detail  
25 you have requested in respect to omnibus claims objections,

1 although I can go into more detail if you want.

2 THE COURT: No, I -- unless anyone is here to speak  
3 with regard to those three matters, based on my review of the  
4 objection and there being no opposition, I'll grant those three  
5 objections.

6 MR. TULLSON: Thank you, Your Honor. We will submit  
7 an order to chambers.

8 THE COURT: Okay.

9 MR. TULLSON: And I'll turn the podium over to my  
10 colleague, Ron Meisler.

11 MR. MEISLER: Thank you, Your Honor. Ron Meisler from  
12 Skadden Arps.

13 Matter number 5 on the agenda, Your Honor, is salaried  
14 retirees' motion. It's a motion seeking this Court's  
15 confirmation that their second amended complaint does not  
16 violate the modified plan or the plan modification order.  
17 Since, Your Honor, it is the salaried retirees' motion, I'd  
18 like to hand the podium over -- cede the floor to Mr. Shelley  
19 and Mr. Schwartz.

20 THE COURT: Okay, go ahead.

21 MR. SHELLEY: Good morning, Your Honor. Anthony  
22 Shelley here on behalf of Den Black, Charles Cunningham,  
23 Kenneth Hollis, and the Delphi Salaried Retirees Association --  
24 Retirees Association, and with me is Alan Schwartz. We're here  
25 seeking confirmation that our second amended complaint in the

1 Michigan court action does not violate the modified plan and  
2 the plan modification order. We've come as a precautionary  
3 measure designed to ensure the proper removal of New GM from  
4 the Michigan litigation in compliance with the Court's earlier  
5 enforcement order.

6 The second amended complaint changes only the fifth  
7 claim in the original complaint, which is against the Treasury,  
8 the Auto Task Force, other individuals, but it doesn't alter  
9 the substance of the first four claims against the PBGC. The  
10 DSRA, the salaried retirees worked out the pleadings language  
11 with New GM, and New GM has not filed an objection to the  
12 second amended complaint.

13 But an objection did arise from the debtors. Not to  
14 anything that was changed in claim number 5, but seemingly to  
15 the first four claims against the PBGC. They filed that  
16 objection notwithstanding that they stipulated to the filing of  
17 the original complaint, including those PBGC claims back in  
18 September. In our view, the objection is opaque and somewhat  
19 ambiguous. They don't object to any specific claim or even  
20 specific language. They do mention one line in the prayer for  
21 relief that gives them pause, a line that was in the original  
22 complaint, too, to which they did stipulate. That line is  
23 something on the order that the Michigan court should award  
24 appropriate equitable relief against the defendants in the  
25 Michigan litigation -- the defendants in the Michigan

1 litigation -- which don't include the debtor -- to place the  
2 parties in that litigation, which again don't include the  
3 debtor, in the position they were in prior to the termination.  
4 The debtors stated in their objection they object insofar as or  
5 to the extent that or if the claims would result in the  
6 relevant ERISA plan being restored to them.

7 We think the Court should reject the objection for  
8 four reasons. The first is a practical reason, and that is we  
9 haven't sought restoration of the plan to the objectors. The  
10 second is that the stipulation should bar the objection, and  
11 third, restoration to the debtors, if it was sought, wouldn't  
12 violate the modified plan in our view, and finally, the  
13 equitable mootness doctrine that they've invoked doesn't apply  
14 here.

15 THE COURT: But you've said you're not -- not only  
16 have you not sought it, but you're not seeking restoration of  
17 the plan, right?

18 MR. SHELLEY: Correct.

19 THE COURT: To the debtors?

20 MR. SHELLEY: Correct. The only party that's argued  
21 for it is --

22 THE COURT: The PBGC --

23 MR. SHELLEY: -- the PBGC --

24 THE COURT: -- as a way to protect itself.

25 MR. SHELLEY: Correct.

1 THE COURT: Saying that that couldn't be done.

2 MR. SHELLEY: Correct, correct. So it's, at best --  
3 for the first reason, the practical reason, we haven't sought  
4 the restoration. And in fact, the Michigan Court has indicated  
5 that that's not an option that it's going to -- that is  
6 equitable at all, really, because it doesn't give us relief.

7 THE COURT: Well, I'm not -- I'm not sure the Michigan  
8 Court has definitively ruled on that issue --

9 MR. SHELLEY: That's correct.

10 THE COURT: -- from what your pleading says, but it's  
11 more significant to me that you've stated to me in these  
12 pleadings, as well as to the Michigan Court, that you are not  
13 seeking restoration of the plan to the debtors. I mean, to me,  
14 if I grant your motion, that's just judicial estoppel.

15 MR. SHELLEY: Correct.

16 THE COURT: I'm basing -- I would be basing my ruling  
17 on that position.

18 MR. SHELLEY: Correct. And, in fact, we've offered to  
19 alter the claim for relief to specifically state that we're  
20 seeking equitable relief requiring the PBGC to administer the  
21 plan and provide benefits as if the plan had not been  
22 terminated.

23 THE COURT: I think it's clear from your pleadings  
24 that that's what you're seeking.

25 MR. SHELLEY: Exactly. Yes, Your Honor. So Your



1 Honor's correct, we aren't seeking that. Second, the  
2 stipulation agreed -- the debtors agreed to the claims as  
3 stated in the original complaint.

4 THE COURT: Maybe I can cut through this a little bit,  
5 although I haven't heard from the debtors. The stipulation was  
6 signed at a particular time, September 2009, and it does have  
7 this reservation which says that the plaintiffs to the action  
8 shall not use the action or the proceedings thereto as a  
9 collateral attack on any order of the Court including the order  
10 confirming the modified plan. The salaried workers reserve  
11 their rights --

12 MR. SHELLEY: To contest it.

13 THE COURT: -- to say whether they'd be bound by that.  
14 The order that you're asking me to sign today basically doesn't  
15 continue that. Basically, it says that -- all it says is that  
16 the filing of the seconded amended complaint and the pursuit of  
17 the relief requested therein will not violate the modified  
18 plan, the plan modification order or any other order of this  
19 Court. And I guess if I was being a careful lawyer, I would  
20 say does that order somehow trump the stipulation since the  
21 stipulation has this reservation in it. I think it's probably  
22 belt and suspenders, but I would be more comfortable if there  
23 was a similar proviso that said that -- provides -- and  
24 particularly given the phrase "pursuit of the relief requested  
25 therein" which is, you know, that's a little bit more open-

1 ended. The proviso would say that provided --

2 MR. SHELLEY: We won't use it as a collateral  
3 attack --

4 THE COURT: Won't use it as a collateral attack on any  
5 order of the Court or the discharge.

6 MR. SHELLEY: We're fine with that.

7 THE COURT: Okay. I thought it was belt and  
8 suspenders, but --

9 MR. SHELLEY: Okay.

10 THE COURT: -- just so that someone reading this three  
11 years from now when it's on appeal to the Sixth Circuit.

12 MR. SHELLEY: Right. Do you want me to go further,  
13 Your Honor?

14 THE COURT: I mean, that would be my suggestion. I  
15 don't know, I mean, maybe -- I don't know where the debtors are  
16 on this.

17 MR. MEISLER: Your Honor, and Mr. Shelley, I'm happy  
18 to speak right here so you can stay put, unfortunately, Your  
19 Honor, that doesn't work for us. We're not comfortable with  
20 that. And when Mr. Shelley characterizes our concern as the  
21 equitable relief gives us pause, I would call it alarm. And it  
22 alarms us because the relief that they're seeking, it says any  
23 appropriate equitable relief to undo the termination and put  
24 the parties back to where they were prior to termination.

25 THE COURT: But that was in there all along.

1 MR. MEISLER: That's true, Your Honor, and in fact the  
2 stipulation from September 2011 (sic), if we can just go back  
3 on the history, in fact it's not a -- the agreement didn't  
4 arise from events that happened in September of 2009; rather it  
5 memorialized the reservation of rights that you granted to them  
6 at the July 2009 confirmation hearing -- July 29th, to be  
7 specific. Your Honor, we did understand at that time that they  
8 could seek their relief to challenge termination under 4003 of  
9 ERISA which would challenge the termination, and under 4003,  
10 gives -- the remedy is any appropriate equitable relief. And  
11 we understood that we had risk from July 2009 until we went  
12 effective with respect to the possibility that that equitable  
13 relief could include the PBGC restoring plan to Delphi. But  
14 once we went effective, once there was a substantial  
15 consummation of the plan, we believe that they lost the  
16 opportunity to have that equitable right include that salary  
17 plan ever going back to the reorganized debtors. Doing so,  
18 Your Honor, would render DPH Holdings and its reorganized  
19 debtors, its affiliated reorganized debtors immediately  
20 insolvent, and we would not be able to complete implementation  
21 of the plan which would be to the severe prejudice of the  
22 administrative creditors -- the allowed claims and the  
23 administrative creditors. Your Honor, our concern -- and it's  
24 actually that reservation of rights that's memorialized in  
25 paragraph 2 of the stipulation -- is not just that Mr. Shelley

1 and his client or clients would present this collateral attack  
2 on the plan but rather the direction that they're heading,  
3 which, they're seeking equitable relief, even though they're  
4 asking for the PBGC to take the plan, and for the PBGC to  
5 administer the plan as though it's a plan sponsor, we don't  
6 understand that relief under the law. The PBGC doesn't  
7 understand that relief under the law, and our cocounsel at  
8 Groom Law Group -- they're our ERISA experts -- they similarly  
9 don't understand that relief being requested. So even if Judge  
10 Tarnow were to grant that relief -- and candidly, it seems like  
11 Judge Tarnow is moving in a direction that is favorable to Mr.  
12 Shelley and unfavorable to PBGC -- we don't understand that  
13 grant of relief under ERISA, and therefore, we see the PBGC  
14 appealing the order, or otherwise moving to put that pension  
15 plan back to DPH. Should that happen, in our opinion, that is  
16 the manifestation of a collateral attack on the plan because we  
17 will not complete our job which is to implement the plan.

18 THE COURT: But you're basically saying is that what  
19 they're saying should be barred by doctrines of mootness or  
20 estoppel, right?

21 MR. MEISLER: Your Honor, that is correct because --

22 THE COURT: But the relief they're seeking is only to  
23 say that they're not violating the plan or the plan  
24 modification order or orders of the Court with the  
25 qualifications that we talked about. They're not seeking a

1 determination that the relief they're seeking is not moot.

2 That's not -- I'm not ruling on that issue.

3 MR. MEISLER: Your Honor, you're correct about that,  
4 and I'd like to address two issues. Number one, on equitable  
5 mootness, we're actually at -- we realize, Your Honor, that in  
6 their motion, they weren't seeking an equitable mootness issue,  
7 they weren't seeking to unravel that issue. But Your Honor,  
8 we're asking you to look forward and look at what is bound to  
9 happen and save the reorganized debtors the cost of taking this  
10 matter into the Michigan Federal Court -- into the Federal  
11 Court in the Eastern District of Michigan whether by appeal or  
12 the district court because we know that where this is going to  
13 end up is on an equitable mootness ground because it's going to  
14 end up attacking the plan. We're going to end up as a  
15 recipient of the restoration of the plan or some move --

16 THE COURT: But it is certainly conceivable that it  
17 wouldn't. I mean, it's conceivable that he could -- that the  
18 District Court could say that the PBGC should pay for the  
19 difference between what they're already paying for and the full  
20 benefits, in which case it wouldn't affect anyone except the  
21 taxpayers.

22 MR. MEISLER: Your Honor, interestingly enough, Judge  
23 Tarnow is moving in exactly that direction, but Your Honor, our  
24 problem is that under ERISA, the PBGC has very strict  
25 guidelines as to what it can or can't do.

1 THE COURT: But that's, I mean, but what I'm saying is  
2 that the issue of taxing the debtors with the cost doesn't seem  
3 to be front and center. I mean, they've sought payment from  
4 the PBGC and from the Treasury and from individuals working on  
5 behalf of the government. I mean, there are a lot of other  
6 pockets that they're seeking relief from. It just -- and I'm  
7 not the only Court that can make the mootness determination.

8 MR. MEISLER: That's correct, Your Honor. We thought  
9 that this would short-circuit or shortcut and save the  
10 reorganized debtors the cost of heading in --

11 THE COURT: It just -- it seems to me that that really  
12 isn't front and center here. I mean, it really depends on your  
13 argument that there's no other way for retirees to win here  
14 except to impose the cost on the debtors.

15 MR. MEISLER: That's right, Your Honor.

16 THE COURT: And if that were the case, I'd believe it  
17 would be moot. But that -- I mean, clearly, that's not briefed  
18 here. That argument's not briefed here by anybody and it's  
19 right in front of the District Court. And the District Court,  
20 at least on a preliminary basis, has ruled to the contrary. So  
21 it just seems to me that that's -- that makes this request of  
22 yours premature. And particularly with the extra bells and  
23 whistles or belts and suspenders -- whatever cliché you want to  
24 put in -- that I would put into the order that this order  
25 essentially doesn't undo the -- maybe we should put in, also,

1 doesn't -- and also subject to the principles of mootness and  
2 estoppel which are all not in front of me.

3 MR. MEISLER: Understood, Your Honor. The language  
4 of -- sorry, let me back up just for a --

5 THE COURT: Let me just -- let me back up. It seems  
6 to me that your argument here, which I think is different from  
7 the objection, is that facts have changed since the stipulation  
8 was entered into, i.e., the plan's gone effective.

9 MR. MEISLER: That's correct, Your Honor.

10 THE COURT: But on the other hand, they're not asking  
11 for a determination that the relief they're seeking is not moot  
12 basically because they're not seeking the relief that you're  
13 worried about. And I think until that relief is threatened to  
14 be imposed, and given the status of the case in Michigan, it  
15 just seems to me premature to raise the mootness issue.

16 MR. MEISLER: Your Honor, what alarms us, though, is  
17 that the concept of restoring the plan to DPH has been raised  
18 in the pleadings in front of the Eastern District of Michigan.

19 THE COURT: But not by the --

20 MR. MEISLER: I one hundred percent agree, but  
21 paragraph 2 of the stipulation from September 2009 specifically  
22 states that not only do we reserve our rights in the event that  
23 Mr. Shelley's clients attack the plan, but in fact, if it turns  
24 out that the direction of the case in the Eastern District of  
25 Michigan that another party collaterally attacks the plan --

1 THE COURT: Right.

2 MR. MEISLER: -- then again, we reserve our rights --

3 THE COURT: But I think it's just a reservation. I  
4 mean, I just don't think we're there yet. I mean, one of the  
5 key findings on mootness is that you can't provide the relief.  
6 And I think that's particularly the case with constitutional  
7 mootness as opposed to Chapter 11 mootness. And it's a -- we  
8 haven't gotten to it. But one of the four points that the  
9 retirees make is that this isn't clearly on all fours with the  
10 Chapter 11 in these cases because it's tied into the plan but  
11 not an appeal and not directly the plan. I think it's, I mean,  
12 I think your best argument's constitutional mootness in the  
13 fact that you can't really provide a remedy here without  
14 providing notice to the thousands of people who relied on the  
15 plan and the facts that have occurred over the last -- well,  
16 since the effective date, the last year and several months.

17 MR. MEISLER: And Your Honor, with respect to whether  
18 it's an attack on the plan, now if we can depart for a moment  
19 from equitable mootness, we do see it as a potential or we see  
20 that the possibility of it becoming an attack on the plan  
21 because if the plan were to be put back to DPH, then, of  
22 course, that would eviscerate the PBGC settlement agreement.  
23 Then we have a problem, what happens -- we have a problem  
24 because we can't implement the plan. We have a problem because  
25 PBGC was granted a seventy million dollar cash award on the



1 effective date. What is that, a windfall? What happens to  
2 that?

3 THE COURT: No, I understand. I think that if all of  
4 those things are in prospect, then it would appear to be --  
5 first of all, I don't think that the salaried retirees would be  
6 able to request that type of relief because of the basis for  
7 this motion. Second of all, I think that if the Court were  
8 somehow forcing it on them, which I don't think judicial  
9 estoppel works that way, frankly, but if the Court were -- the  
10 district court or the Sixth Circuit or someone were to force it  
11 on them, I think that at that point, you have your mootness  
12 argument. But I just -- what I don't, I mean, in essence, what  
13 you're saying here is that the lawsuit should be stopped, and  
14 it seems to me, particularly given the at least initial ruling  
15 by the District Court that he's already decided it shouldn't  
16 stop on this very basis.

17 MR. MEISLER: Your Honor, we don't think that the  
18 litigation should stop. We just, rather than having them seek  
19 the equitable relief of putting the plan back, we would want  
20 them to --

21 THE COURT: But they're not looking to put it back to  
22 Delphi. They're looking to put a plan in place that PBGC  
23 would, in essence, be the sponsor of or the government would be  
24 the sponsor of.

25 MR. MEISLER: Right, and to the extent that's

1 permitted by law, that would be okay with us. But we're  
2 concerned that it's not permitted by law and we --

3 THE COURT: But he's -- you've offered that up as a  
4 way to narrow the complaint.

5 MR. SHELLEY: Correct.

6 THE COURT: I mean, maybe that's your solution. That  
7 would give you more comfort than -- I mean, he's -- it's been  
8 represented to me that the relief that the retirees are seeking  
9 in Michigan does not seek to have the plan put back to Delphi,  
10 that it seeks to extend its seeking equitable relief with  
11 respect to restoration of a plan or the plan, it would be only  
12 with the sponsor of the plan being someone other than entities  
13 protected by the plan injunction. It would be not GM and not  
14 Delphi.

15 MR. SHELLEY: In the specific language, we would offer  
16 that the Court award equitable relief requiring the PBGC to  
17 administer the plan and provide benefits as if the plan had not  
18 been terminated.

19 THE COURT: So, I mean, they've made it clear in their  
20 pleadings, and it would be the basis for my granting relief  
21 because you flagged the issue and it's highlighted and it's  
22 been clarified that they're not seeking to impose any liability  
23 on Delphi. And I think that's enough for judicial estoppel,  
24 frankly, but do you want to have that clarified in the order or  
25 in the complaint?

1 MR. SHELLEY: You know, that's fine, too.

2 MR. MEISLER: Your Honor, that's very helpful. The  
3 last issue that concerns us is the -- and your reservation of  
4 rights that you discussed that would be included in the --

5 THE COURT: Well, yeah, that this order would not  
6 provide that -- what we talked about and the reservation of  
7 rights on mootness and estoppel. But again, that's belt and  
8 suspenders because they're not asking for that here. They're  
9 not asking for the obverse of that which is declaration that  
10 the complaint is not barred by movants.

11 MR. MEISLER: Understood, Your Honor, and that is very  
12 helpful. But my last concern is that in paragraph 2 of their  
13 proposed order, I feel like the relief that they're seeking in  
14 the order goes much further, it's much broader as they say  
15 "pursuit of the relief requested therein will not violate the  
16 modified plan".

17 THE COURT: I understand.

18 MR. MEISLER: And my concern is even with the  
19 reservation of rights --

20 THE COURT: Well, you could say "their pursuit of the  
21 relief".

22 MR. MEISLER: Your Honor, I was even hoping that we  
23 could remove pursuit so that --

24 THE COURT: Well, but it's the same thing. It's  
25 like -- I thought of removing it, actually, but I don't think

1 it works, I mean, because that basically means that they can't  
2 say anything. And I think they are free to say what they've  
3 been saying in the Michigan court. But you should be free to  
4 say that if they start saying something different, that they're  
5 barred by judicial estoppel or mootness or violation of the  
6 orders. And if someone else seeks that relief, this doesn't  
7 even cover them. I think it should say "their pursuit" as  
8 opposed to, or "the retirees' pursuit", as opposed to "the  
9 pursuit" because that suggests that anyone who moved -- who has  
10 an axe to grind in that lawsuit is free from this order,  
11 although I don't think that's the meaning or intention.

12 MR. MEISLER: And Your Honor, so that a year or two  
13 from now when someone else is looking back at this order, with  
14 this Court's permission, I would like the proposed order to  
15 read, actually, that should any other party try and --

16 THE COURT: It doesn't need to say that. It just says  
17 that filing in -- I did have in here -- it's my last comment --  
18 that the retirees' pursuit because, you know, that's all that  
19 they're asking for.

20 MR. MEISLER: Okay, thank you, Your Honor.

21 THE COURT: So I think the record's clear. I'm not  
22 requiring you to amend the complaint. I think that that may be  
23 worthwhile, but I think the record's clear as to what the order  
24 should say, which is that there are really two provisos that --  
25 there's the provisos from the stipulation, and then secondly,

1 that they won't -- in addition to that, the discharge, you  
2 know, this doesn't waive the discharge. And then the last  
3 point is that the debtors DPH's rights in respect of arguments  
4 -- any arguments with respect to mootness or estoppel are fully  
5 preserved which I think is implicit in this because they're not  
6 asking for a ruling on this. And I'm ruling on, expressly,  
7 because of the representations, that the retirees are not  
8 seeking to impose liability on or the plan on Delphi or any of  
9 the protected parties under the injunction.

10 MR. MEISLER: That's very helpful, and it would make  
11 my client much more comfortable if prayer for relief in E was  
12 modified consistent with what you had read on the record.

13 THE COURT: Yeah, and that's certainly consistent with  
14 the judge's ruling in Michigan and the position the retirees  
15 have taken in Michigan, so that may be fine.

16 MR. SHELLEY: We can do that one, too.

17 MR. MEISLER: Thank you, Your Honor.

18 THE COURT: So I think on this one, I'll grant the  
19 motion as modified on the record. You should work together on  
20 the order. And if there's a problem, you should settle the  
21 order. But I'm not expecting there'll be a problem. I think  
22 the transcript's clear.

23 MR. SHELLEY: Okay, thank you, Your Honor.

24 MR. MEISLER: I would agree. Thank you, Your Honor.

25 THE COURT: You should settle it on ten days' notice,

1 but I don't think you'll get to that point.

2 MR. CORDARO: Pardon me, Your Honor. May I just be  
3 heard for a minute on this?

4 THE COURT: Sure.

5 MR. CORDARO: I'm from the U.S. Attorney's Office.

6 THE COURT: Sure.

7 MR. CORDARO: I just want to make a -- Joseph Cordaro,  
8 Assistant United States Attorney, and this may be just another  
9 pair of suspenders, Your Honor, so I'll be very brief. But  
10 even though the United States has not taken any position on the  
11 motion before Your Honor --

12 THE COURT: Right.

13 MR. CORDARO: -- which you just granted, obviously,  
14 the federal defendants in Michigan reserve their rights to  
15 litigate the Rule 15 issue, which would be an application to  
16 amend the complaint --

17 THE COURT: Oh, yeah.

18 MR. CORDARO: -- before the district judge in  
19 Michigan.

20 THE COURT: Right, right. And that's why I'm not  
21 requiring you to amend the complaint because I don't think it's  
22 necessary. You know, that will be up to that judge to approve  
23 the amendment.

24 MR. SHELLEY: Okay.

25 MR. CORDARO: Thank you, Your Honor.

1 MR. MEISLER: Thank you.

2 Your Honor, moving to matter number 6, I'm going to  
3 stay put since once again we have someone else's motion or  
4 application. Specifically, matter number 6 is Davidson Kempner  
5 Capital Management LLC, et al. application for reimbursement of  
6 fees and expenses, pursuant to Section 1129(a)(4) and  
7 Bankruptcy Rule 9019.

8 Your Honor, since it is their application, I gladly  
9 let them proceed.

10 THE COURT: Okay.

11 MS. MARTIN: Good morning, Your Honor. Gina Martin of  
12 Goodwin Procter on behalf of certain noteholders for payment of  
13 fees and expenses pursuant Section 1129(a)(4) and Bankruptcy  
14 Rule 9019. Your Honor, as set forth in our application, and as  
15 you may recall, the senior noteholders and the debtors entered  
16 into a settlement with the debtors pursuant to Rule 9019 just  
17 prior or at the first day of the confirmation hearing for the  
18 first amended plan of reorganization of Delphi. Pursuant to  
19 that settlement, the debtors agreed to pay up to five million  
20 dollars in actual, reasonable documented fees and expenses  
21 incurred by the noteholders' professionals, which include  
22 Goodwin Procter, Klestadt & Winters, and Maryann Keller and  
23 Associates. In exchange, the senior noteholder -- for the  
24 payment of fees and expenses, the noteholders agreed to  
25 withdraw their objection to the confirmation and certain other

1 motions that were coming at that time by the senior  
2 noteholders. The settlement provided that the senior  
3 noteholders would be required to file an application for  
4 payment and that the debtors would be required to pay such fees  
5 when the Court approved -- if and when the Court approved the  
6 application as being reasonable based on the totality of the  
7 circumstances. We filed our application in November of 2009.  
8 Pursuant to that application, the noteholders seek  
9 approximately 3.9 million dollars in fees and expenses. That's  
10 more than one million dollars below the amount that the debtors  
11 agreed to support and pay.

12 Your Honor, I can go through more detail in the  
13 application, which documents that the fees -- where the  
14 professionals spent their time. It says the reason -- it  
15 documents the expenses, it certifies that those expenses are in  
16 accordance with the rules of this district. But Your Honor, no  
17 objections to this application have been filed. The United  
18 States trustee did file an objection which included our  
19 application but said that it found that our fees and expenses  
20 requested were reasonable.

21 THE COURT: Right. I have viewed this application as  
22 the plan modification provides, not under 503(b) but rather  
23 under the terms of the actual settlement. And I did have --  
24 and consequently, whereas I might have had -- and I'm sure the  
25 United States trustee would have serious issues with a lot if



1 not all of the requests under 503(b), I understand the United  
2 States trustee's response here. But I wanted to explore a  
3 couple of aspects of it with you. But before I do that, I see  
4 Mr. Meisler standing up.

5 MR. MEISLER: Thank you, Your Honor. Your Honor, I of  
6 course recognize DPH's obligation to support the reasonable  
7 fees incurred by the senior noteholders under the standard of  
8 totality of the circumstances. But Your Honor, I also want to  
9 the transcript, as well as to the confirmation order, the  
10 January 25th, 2008 confirmation order to at least communicate  
11 our perspective, which is we think the record is clear that DPH  
12 or the reorganized debtors has the right to review and test the  
13 fees being sought which are not reasonable under the totality  
14 of the circumstances. Your Honor, as we are all aware and as  
15 was very painful for all of our stakeholders, circumstances  
16 changed dramatically since the January 17, 2008 hearing, and  
17 therefore, the lens through which reasonableness is viewed has  
18 changed drastically.

19 Your Honor, the reorganized debtors believe that they  
20 cannot separate the hindsight review set forth in substantial  
21 contribution and 707 of the Bankruptcy Code where --

22 THE COURT: 503.

23 MR. MEISLER: Sure, Your Honor, 503, correct, but I  
24 wanted to raise 707 as well, and I mention that just because  
25 that's an example of where totality of circumstances, the words

1 or the terms --

2 THE COURT: Oh, okay.

3 MR. MEISLER: -- are used in the Bankruptcy Code.

4 And, in fact, we believe that when viewing reasonableness for  
5 the totality of circumstances, that concept includes the  
6 perspective of hindsight.

7 THE COURT: But wouldn't that -- okay, you can go  
8 ahead.

9 MR. MEISLER: That said, Your Honor, we want to be  
10 clear. We want to conduct ourselves in a manner consistent  
11 with the agreement. Your Honor, if your interpretation -- and  
12 I can cite to you in the record, it's the January 17, 2008  
13 transcript, page 21 lines 1 through 8 and your response on page  
14 30 of the transcript, lines 5 through ten. And in those  
15 sections, it makes clear that the debtors or reorganized  
16 debtors had reserved their right to challenge reasonableness.  
17 Again, the question becomes what is totality?

18 THE COURT: But there was -- at that hearing, there  
19 was no discussion, for example, of what the meaning of totality  
20 of the circumstances was or whether, for example, if the plan  
21 didn't go effective, this wouldn't be allowed, or anything like  
22 that.

23 MR. MEISLER: Well, in fact, Your Honor, in the  
24 transcript, in the January 17, 2008 transcript, there is  
25 discussion because there was uncertainty regarding what

1 totality of the circumstances meant, and in fact, it was the  
2 United States trustee that analyzed this issue and had really  
3 brought this to your attention. And in the transcript, lines  
4 19 through 25, page 30, you had actually mentioned that there  
5 is substantial overlap between the 503 standard and the  
6 totality of the circumstances. You did acknowledge --

7 THE COURT: You'd better show that to me because I  
8 need to see that.

9 MR. MEISLER: Your Honor, my version is annotated,  
10 which counsel is welcome to look at, but we should, if you give  
11 us a moment, we should have a clean copy.

12 MS. MARTIN: Your Honor, I can read into the record --

13 MR. DUNCOMB: It's tab 11 in here, Your Honor.

14 MS. MARTIN: -- the sections --

15 THE COURT: I'm sorry.

16 MS. MARTIN: -- and your discussion.

17 THE COURT: What did you say?

18 MR. MEISLER: It's tab 11 in your binder on  
19 substantial contributions. It's one of the big black binders.  
20 It should -- I think it has an unlabelled spine. This is pages  
21 29 and 30 --

22 THE COURT: Okay.

23 MR. MEISLER: -- line 16 on page 29, and it goes all  
24 the way to the first line on page 30.

25 THE COURT: Okay.

1 (Pause)

2 THE COURT: Okay.

3 MR. MEISLER: Your Honor, if you want to hear from DPH  
4 further, we would be happy to further discuss what we think  
5 totality of the circumstances mean. Again, I want to emphasize  
6 that we're keeping in mind, Your Honor, that if you interpret  
7 the record and your confirmation order from January 2008  
8 differently regarding DPH's right to test what that standard of  
9 totality of the circumstances means, we, of course, will fully  
10 support your ruling and your interpretation. We -- just to  
11 repeat, we seek only to act in a manner consistent with the  
12 agreement that we had with the senior noteholders and Your  
13 Honor's order.

14 MS. MARTIN: Your Honor, it seems to me that the  
15 confirmation order says that "the debtors shall use their  
16 reasonable best efforts to obtain Court approval of the payment  
17 of such fees and expenses including without limiting preparing  
18 and filing supportive pleadings, and if necessary, propounding  
19 testimony in support of the fee applications and senior  
20 noteholders' settlement." They're now claiming that they're  
21 not objecting. What they're trying to do is elevate the  
22 standard by which parties should review this. It's clear from  
23 the confirmation hearing that we didn't settle under a 503(b)  
24 standard. We settled pursuant to Bankruptcy Rule 9019. And in  
25 fact, if you go back in the transcript, it talks -- the United

1 States trustee objected and said that it should be subject to a  
2 503(b) standard, and Your Honor ruled that, no, it didn't have  
3 to be. It was going to be somewhere in between 1129(a)(4) and  
4 503(b).

5 We think that -- and we've said this in our  
6 application and we've said this in our reply -- that in between  
7 those two is probably something most akin to 330. And under  
8 330, we've demonstrated that the fees that we incurred at the  
9 time were reasonable.

10 THE COURT: Okay.

11 MR. MEISLER: Your Honor, we just want to mention two  
12 things. Number one, counsel glosses over the most important  
13 word of paragraph 62.c(3) which is that "the debtors shall use  
14 their reasonable best efforts to obtain Court approval of the  
15 payment of such fees", and I want to emphasize "such fees"  
16 because "such" are those fees that are reasonable under the  
17 totality of the circumstances.

18 THE COURT: No, I don't think the debtor has done  
19 anything here that would give the movants -- contrary to the  
20 movants' reply -- some sort of rights under the stipulation.

21 MR. MEISLER: Thank you, Your Honor.

22 THE COURT: The stipulation set forth a standard; the  
23 debtors agreed to support the fees within that standard. But  
24 that still leaves open the issue of the tweaking of the  
25 standard between 330 and 503(b). It clearly was not a 503(b)

1 standard because that was the objection that I overruled. And  
2 I did so on the basis that I believe the settlement in terms of  
3 the cost of continuing the litigation with this substantial  
4 constituency was reasonable with the caveat that I and the  
5 other -- and the parties-in-interest would have the opportunity  
6 to review the fees as actually sought in a fee application, and  
7 then the second caveat about dealing with the work for the  
8 former clients and having that be commentated on to the extent  
9 that it benefits the current clients. And the phrase "totality  
10 of the circumstances," I viewed the totality of the  
11 circumstances there as tied into the settlement, what was the  
12 settlement for. And that really leads to my questions here.

13 They are smaller categories, but there are three  
14 categories here that seem to me not to fit within this deal.  
15 The first one was dealing with the MDL. The second is dealing  
16 with the alternative investment -- heating investment approach.  
17 And the third is the work that was done by Klestadt & Winters  
18 with regard to the claim objection. It seemed to me that the  
19 deal was tied into the work that the firms had done in  
20 connection with the confirmation fight, which included the  
21 disclosure statement fight and coming up to speed, which  
22 included organizing and the like. But I think that the other  
23 categories that I just listed don't really fall into that  
24 group.

25 In addition to that, at least with regard to the

1 alternative investment issue, I don't know whether that was for  
2 former clients or not, but if it was for former clients, I  
3 don't see how that really would have benefited the current  
4 clients. But that's really sort of a secondary basis for  
5 raising that problem with the application.

6 So to summarize, it seems to me that under the  
7 circumstances of the settlement, the fees sought for the  
8 disclosure statement/plan objection and for organizing the  
9 group in coming up to speed generally in the case were covered.  
10 And I agree with the United States trustee and I guess  
11 implicitly with everyone else since no one else has objected  
12 that those fees are reasonable under Section 330 or under any  
13 definition of reasonableness, but that looking at the -- these  
14 other categories, I'm troubled that they don't really seem to  
15 fit into the deal which was -- there was a pending objection  
16 that had been hotly pursued and basically it was resolved on at  
17 the confirmation hearing.

18 MS. MARTIN: Your Honor, with respect to the  
19 alternative investment agreement category, I can understand how  
20 that didn't feed into any objection or --

21 THE COURT: Right.

22 MS. MARTIN: -- the like. I mean, it could have, but  
23 it never ultimately came to fruition, so --

24 THE COURT: Was it for old clients too, or --

25 MS. MARTIN: I don't believe so, but I --

1 THE COURT: Not sure?

2 MS. MARTIN: -- it's been a while.

3 THE COURT: Okay.

4 MS. MARTIN: But with respect to the multidistrict  
5 litigation settlement, I mean, my understanding of that is that  
6 part of what we were doing there was trying to enforce what  
7 should have statutorily subordinated claims and trying to  
8 prevent them from becoming elevated to being pari with the  
9 senior noteholders' claims. So to that extent, I think that  
10 there was a benefit, that there was a reasonable basis for  
11 pursuing that category.

12 THE COURT: How is that tied into the plan objection  
13 process, though?

14 MS. MARTIN: Well, if you -- I don't -- again, it's  
15 been a while, but my recollection is that one of the things  
16 that we were seeking was enforcement of that. But we had to  
17 essentially keep the -- almost keep the litigation alive. And  
18 so when we withdrew our confirmation objections, we also  
19 withdrew all of our objections with respect to the  
20 multidistrict litigation settlement. And so I would say that  
21 the settlement that we made at the confirmation hearing  
22 encompassed that.

23 THE COURT: But I think the MDL was done before that,  
24 wasn't it?

25 MR. MEISLER: Your Honor, in fact, from the record on



1 the hearing, the controversy that was at issue was the  
2 valuation fight.

3 THE COURT: I think the MDL was done way bef -- I  
4 mean, I just -- you know, that was done in the fall of 2007. I  
5 just --

6 MR. TOMER: Your Honor --

7 MS. MARTIN: My recollection --

8 MR. TOMER: I'm sorry.

9 Your Honor, Brent Tomer from Goodwin Procter. I  
10 believe that the actual -- the portion of the objection to the  
11 MDL settlement that senior noteholders made at the time while  
12 the hearing occurred well prior to plan confirmation, that our  
13 objection to the MDL settlement was held over to be heard in  
14 connection with plan confirmation at the hearing --

15 THE COURT: Was it reserved --

16 MR. TOMER: -- were the objections were -- yes.

17 THE COURT: -- on that issue?

18 MR. TOMER: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. MEISLER: Your Honor, looking at page 26 -- pages  
21 26 and 27 of the transcript, starting at line 22, that provides  
22 the clarity of what was at the heart of the settlement, which  
23 was the potential protracted litigation on valuation at the  
24 confirmation hearing.

25 And for background, the concern at the time that the

1 risk that the reorganized -- or, sorry, the debtors -- at the  
2 time, we were the debtors. The risk that concerned the debtors  
3 was that we had a rights offerings that was going to price, and  
4 we didn't want a valuation fight to prejudice our abilities to  
5 launch or commence that rights offering.

6 (Pause)

7 THE COURT: Let me just look at one --

8 (Pause)

9 MS. MARTIN: Your Honor?

10 (Pause)

11 THE COURT: Okay.

12 MS. MARTIN: Your Honor, I don't know if -- I was  
13 flipping through trying to find it, but on page 19 of the  
14 transcript of the confirmation order, lines 17 through 25 where  
15 Mr. Butler was introducing the settlement, the second paragraph  
16 that I have starts on page 17: "We have -- the understanding  
17 that we have with the bondholders is that the objecting parties  
18 would withdraw their objection to the plan. They will" --

19 THE COURT: And it refers to the MDL.

20 MS. MARTIN: Yeah, right, and it does reference the  
21 MDL.

22 THE COURT: Yeah. Okay.

23 All right. As far as everything else?

24 (No response)

25 THE COURT: Okay, I will grant the application except

1 for the fees sought with regard to -- now I lost my categories;  
2 I think it's Category 5, the alternative investment. I'm  
3 sorry, Category 4, GP Services Rendered in Connection with  
4 Competing Investment Agreement. And the Klestadt & Winters  
5 services which were in connection as with the claim objection,  
6 I don't believe those were part of the settlement.

7 You could argue, and I'm sure probably someone who's  
8 going to be ultimately paying this bill will be arguing it back  
9 in his or her office, that we made a deal that covered  
10 everything. But I think the -- that wasn't the case as far as  
11 what was actually approved by me. I was approving a settlement  
12 that really balanced the cost that I viewed at the time of  
13 going ahead with the plan objections versus a settlement under  
14 this standard.

15 And I don't think that it was contemplated by me or  
16 perhaps anyone else, although the debtor may have -- I don't  
17 know where the estimate of five million arrived, but I don't  
18 think it was -- it was clearly not contemplated by me that an  
19 alternative plan investment would -- that services rendered in  
20 connection with that would be covered.

21 And similarly, I think that the claim objection  
22 wouldn't be covered. On the other hand, the work that was done  
23 leading up to the confirmation hearing I think was clearly  
24 covered. The issues raised at the disclosure statement hearing  
25 were primarily ones that were deferred to confirmation, so the

1 work done in connection with those issues led to the issues  
2 that were dealt with at the confirmation hearing. The  
3 transcript as well as your colleague's representation to me  
4 that the MDL issue ultimately was one of the issues that was  
5 reserved by this group for confirmation also means to my mind  
6 that that was what was covered by the settlement.

7 So I believe that that's within the ambit of  
8 reasonable fees under the totality of the circumstances, which  
9 I view this as relating to the deal itself as opposed to  
10 temporal circumstances. But the deal itself I think really  
11 covered the benefits to the estate of this group withdrawing  
12 its plan objections, and the MDL was really part and parcel of  
13 that even though it was not in the plan; it was on for that  
14 hearing.

15 So I'll grant the application as to that extent.

16 MS. MARTIN: Thank you, Your Honor. Your Honor, we  
17 should submit a --

18 THE COURT: You should submit an order.

19 MS. MARTIN: Okay, thank you.

20 THE COURT: You don't need to settle it, but you  
21 should circulate it to Mr. Meisler before you submit it.

22 MS. MARTIN: Of course.

23 THE COURT: Okay.

24 MR. MEISLER: Thank you, Your Honor. Your Honor, the  
25 last matter on the agenda, matter number 7, is certain other

1 senior noteholders' substantial contribution application,  
2 specifically C.R. Intrinsic and Elliott Associates.

3 Similarly, Your Honor, since this is their  
4 application, I cede the microphone or podium to counsel for  
5 C.R. Intrinsic and Elliot Associates.

6 MR. GOLDBERG: Good morning, Your Honor. Eric  
7 Goldberg of Stutman Treister & Glatt, for the Applicant C.R.  
8 Intrinsic and Elliott Associates.

9 I think we have in this one a simpler request and that  
10 the standard is really clearly under 503, although this  
11 request, I believe, is a bit more modest than the prior one.  
12 And I think initially it's important to note here that none of  
13 the parties with an economic interest opposed the allowance of  
14 the administrative claim. The creditors' committee has not  
15 objected.

16 To be fair, the debtors have made the point that I  
17 believe their fiduciary duty compels them to do, which is that  
18 when this deal was made, obviously circumstances were  
19 different. However, they do recognize that they did make this  
20 deal. They did agree not to oppose the allowance of a request  
21 for substantial contribution, subject only to a limitation for  
22 reasonableness, and that to the extent they can bring to the  
23 Court the concern that economic circumstances have changed  
24 without disavowing their obligation to stand by their deal,  
25 then that's what they're doing.

1           So at bottom, I think really what we have here is the  
2       opposition from the U.S. Trustee who's raised objections under  
3       the two grounds: one, whether this satisfies the applicable  
4       standard under 503, and we've set out our position papers and I  
5       don't think we need to go further on that unless Your Honor has  
6       any questions; and then the second issue also pertains back to  
7       the debtors' objection -- their statement is reasonableness --  
8       whether the amount that my clients are seeking here satisfies  
9       the standard for reasonable compensation.

10           And, in particular, the objection the U.S. Trustee has  
11       raised is whether my clients ought to be given a substantial  
12       contribution claim for that portion of our request that relates  
13       to fees prior -- fees and expenses incurred prior to the time  
14       where the dispute really became live with regard to the global  
15       settlement agreement and modification agreement motions.

16           THE COURT: Okay. What -- between the agreement that  
17       was reached by the creditors' committee and the debtors with  
18       GM, and the withdrawal of C.R. and Elliott's objection, what  
19       changed in the GM agreement?

20           MR. GOLDBERG: There were really two tweaks that were  
21       incremental to what had been achieved in the resolution of the  
22       committee's objection, and these basically pertain to  
23       sweeteners in terms of what the entire creditor body would  
24       receive depending on what GM received. So these were  
25       incremental sweeteners on top of the consideration that GM

1 would get either on account of its admin claim or if it were to  
2 receive stock. But in each case there were -- and I don't  
3 recall the particulars, but marginal pieces of consideration  
4 that were not previously part of the deal that the committee  
5 had agreed to but that GM and the debtors agreed to put on the  
6 table in exchange for my clients' withdrawal of their  
7 objections to those motions.

8 THE COURT: Is it quantifiable?

9 MR. GOLDBERG: Well, at this point, yes in the sense  
10 that those things ultimately --

11 THE COURT: No, no, I mean --

12 MR. GOLDBERG: -- did pan out.

13 THE COURT: No, I understand --

14 MR. GOLDBERG: Yeah.

15 THE COURT: -- that, but I'm just -- I'm not using  
16 hindsight at this moment.

17 MR. GOLDBERG: I understand.

18 THE COURT: I'm just trying to figure out -- assume  
19 that that deal actually was implemented in a way that it  
20 contemplated it; is it quantifiable what those changes were?

21 MR. GOLDBERG: It's hard to say because it wasn't a  
22 hard number; it wasn't, like, X dollars, these were  
23 percentages, and if the preferred stock this. But clearly at  
24 the time that we negotiated this, and I was part of those  
25 negotiations, we believed that the incremental value was worth

1 at least five million dollars if not more than that. In  
2 hindsight, that value wasn't there, but, again, we don't  
3 believe that the hindsight is the applicable standard.

4 THE COURT: And, I'm sorry, and the nature of the  
5 changes were that GM gave a greater percentage of --

6 MR. GOLDBERG: Depending on --

7 THE COURT: -- its recovery, or --

8 MR. GOLDBERG: Depending on certain recoveries that  
9 would have gone to GM, if those recoveries went to GM, there  
10 was sort of a sharing mechanism where we would get an  
11 additional cash component depending on payoffs that GM would  
12 receive on account of its admin claim.

13 THE COURT: Okay.

14 I'm just going to ask the debtors as a factual matter  
15 is that how you recollect it, or -- did we have the two  
16 agreements?

17 MR. MEISLER: Your Honor, it's not my recollection. I  
18 was not in the room during negotiations. I was --

19 THE COURT: Well, do we have the first agreement or  
20 the second agreement?

21 MR. MEISLER: You know, we don't. We have the record  
22 on the transcript, and the record indicates the agreement  
23 between -- the record indicates the -- sorry.

24 UNIDENTIFIED SPEAKER: You want --

25 MR. MEISLER: The record indicates --



1 No, that's okay. I can staple it.

2 The record indicates that there were changes to the  
3 deal, but it was changes negotiated between the debtors and the  
4 creditors' committees. And so there's no --

5 THE COURT: Well, that was the first deal, right,  
6 before -- not the first deal. The first deal was between GM  
7 and the debtors, and the creditors' committee got involved  
8 and --

9 MR. MEISLER: That's right.

10 THE COURT: -- we had a chambers conference and I said  
11 you all need to settle this, looking at GM and Mr. Rosenberg.

12 MR. MEISLER: Right.

13 THE COURT: And they went off with your clients, I  
14 trust.

15 MR. GOLDBERG: Well, actually not. They went -- after  
16 the first hearing when Your Honor said let's take a break for a  
17 couple days and try and work this out, and the debtors and the  
18 creditors' committee negotiated for a few days, and they came  
19 back with that deal. Unfortunately we were not invited to  
20 those negotiations.

21 So when the creditors' committee came back with the  
22 deal they made with the debtor, that's not the same deal. We  
23 negotiated -- there was some additi -- the additional tweaks  
24 are the basis for our substantial contribution claim, and it's  
25 those additional pieces of consideration that we're relying on

1 here.

2 We're not trying to glom onto the deal that the  
3 creditors' committee had --

4 THE COURT: Right.

5 MR. GOLDBERG: -- agreed to, and certainly I don't  
6 think Mr. Butler would have agreed to not oppose the  
7 substantial contribution claim for something that he did with  
8 the committee.

9 MR. MEISLER: Your Honor, we simply couldn't figure  
10 out what the incremental change was to the deal between GM, us  
11 and the creditors' committee. We do acknowledge that we had an  
12 agree --

13 THE COURT: Between that deal and the final deal?

14 MR. MEISLER: That's right. We couldn't see how that  
15 metric changed.

16 THE COURT: Okay.

17 MR. MEISLER: We do acknowledge that they were  
18 challenging the GM facility, they were challenging the amended  
19 GSA number 8 (ph.), and more importantly they had -- more  
20 importantly to us, they had a motion for an examiner. And we  
21 saw those challenges in the motion for an examiner as something  
22 that could slow down our ability to move forward and get the  
23 October 2008 plan consummated. And so we thought that, under  
24 that circumstance, to get rid of that motion for an examiner,  
25 that we were willing to do -- to enter into an agreement for a

1 substantial contribution claim -- or, rather, our agreement not  
2 to object.

3 So that was the fundamental rationale behind the deal  
4 that we cut. But, Your Honor, we did similarly look to try and  
5 understand how the construct between GM and Delphi changed, and  
6 we just didn't see it.

7 THE COURT: Okay. I mean, I have to say, I don't see  
8 it either in the papers or at the hearing and that you have the  
9 burden of proof on that. I mean, leaving aside the hindsight  
10 issues -- I mean, I expect you've probably read the transcript  
11 of the rulings on the splinter unions and on the trade  
12 creditors' committee. I believe there is an element of  
13 hindsight. At the same time, the debtors were saving some  
14 money in entering into agreement with you all.

15 But I think before one gets into the hindsight  
16 analysis at all on benefit, there has to have been some initial  
17 benefit, and I just don't -- I don't see it. I mean, maybe  
18 it's there, but it's not here on this record.

19 MR. GOLDBERG: Well, is Your Honor asking in terms of  
20 specific details about which deal points exactly changed --

21 THE COURT: Yeah. I mean, I think -- I mean, for all  
22 I know, after you were brought into the loop, not you  
23 personally but your clients were brought into the loop, they  
24 may have decided, well, this isn't such a bad deal. And so,  
25 you know, I know they're well-represented and they're

1 sophisticated people and they negotiated for the best way out  
2 possible -- which was this agreement by the debtors and the  
3 committee not to oppose a 503(b) application -- I think  
4 probably relying on the fact that other people would.

5 MR. GOLDBERG: Well, I guess, by the same token then,  
6 the debtors and the committee are similarly well-represented  
7 and at the time agreed to not --

8 THE COURT: Well, that was a good deal on their part.  
9 I mean, that was -- they made -- I mean, they didn't make as  
10 good a deal with the Goodwin Procter group, but I guess that's  
11 my problem with this -- my first problem with the application  
12 is that I just don't see -- even if I weren't to distinguish  
13 between benefit and reasonableness, which I think the provision  
14 does, I think it requires you to analyze both. And also,  
15 again, as I said with the trade committee, I think there may be  
16 some continuum even though at the end of the case the deal  
17 doesn't materialize that everyone thought would be a benefit.  
18 There may have been some benefit to the case just because there  
19 was that deal, but I don't think I get to that point, because I  
20 don't see what was added to by Elliott and C.R. from when it'd  
21 previously been negotiated. All I see is that there was a  
22 second agreement, but I don't really know whether that  
23 agreement was anything more than, you know, tweaks.

24 MR. GOLDBERG: And I appreciate that. And part of it,  
25 Your Honor, I think, is that it's hard, in a context like that

1 where you have an evolving deal and points are constantly  
2 moving, to be able to allocate and attribute what changes --

3 THE COURT: Well, I know, but --

4 MR. GOLDBERG: -- that were announced that morning  
5 were --

6 THE COURT: -- I don't even have the two drafts. I  
7 mean, I don't have -- I mean, I can see how a deal changes, but  
8 I don't have that.

9 MR. GOLDBERG: Well, I mean, what you have, I think,  
10 is the initial deal that was filed before the settlement with  
11 the committee and the final deal as it was ultimately approved,  
12 and I just don't know how --

13 THE COURT: Where is that in the record?

14 MR. GOLDBERG: Well, that's in the agreement that  
15 was -- the order approving the agreement. And I think the  
16 problem that we had had --

17 THE COURT: No, I'm sorry --

18 MR. GOLDBERG: -- is how do we say how much of those  
19 changes are --

20 THE COURT: No, maybe -- is there something in the  
21 record for this hearing that has the two -- the first GM deal  
22 and the second GM deal, the one that the debtors and the  
23 committee negotiated and then the second one that also had  
24 Elliott's input?

25 MR. GOLDBERG: I don't believe we have that in the

1 record, unless --

2 THE COURT: Okay.

3 MR. MEISLER: Your Honor, we --

4 MR. GOLDBERG: -- if the debtors have it.

5 MR. MEISLER: -- we do not have that in the record.

6 THE COURT: All right.

7 MR. GOLDBERG: Then what I'd ask Your Honor, if you'd  
8 indulge it, is to allow us to adjourn the hearing and we can  
9 supplement the record with that.

10 THE COURT: Well --

11 MR. MEISLER: Your Honor, that prejudices us. We of  
12 course bill by the hour, and if we have to prepare again and  
13 come back and have to deal with this again, we don't think  
14 that's equitable for our client, the reorganized debtors.  
15 Moreover, Your Honor, we did enter into a scheduling order that  
16 set this date, that set a timeline. They were supposed to have  
17 submitted all their exhibits and any sort of affirmative  
18 evidence that they wanted to put in, whatever their affirmative  
19 case might have been, and that should have been submitted prior  
20 to the May 20th hearing.

21 MR. GOLDBERG: Your Honor, in a case with over a  
22 hundred million dollars of fees billed by the debtors, I think  
23 it really doesn't speak well to a prejudice argument to say  
24 that you would have to take up one additional matter, a  
25 calendar that surely is going to involve more than today's

1 hearing going forward.

2 MR. MEISLER: Your Honor, that's just not relevant.  
3 We're representing reorganized Delphi that has a very finite  
4 budget, and that budget is largely comprised of a facility --  
5 not even a facility; funding provided by General Motors.

6 THE COURT: Well, it's your objections, Mr. Masumoto.  
7 What do you have to say on this?

8 MR. MASUMOTO: Your Honor, I do agree that, based upon  
9 the agreements between the parties, they were to have provided  
10 the documents prior to the hearing, which was in fact in May.  
11 Since then, they did not even make any subsequent attempt to  
12 supplement the record if they thought it was necessary. And  
13 under the circumstance --

14 THE COURT: And actually you did -- there was a reply  
15 to your objection which made this point.

16 MR. MASUMOTO: That's correct. I mean, they did file  
17 something on the docket; however, we still maintain, as we set  
18 forth in our paper, similar to the arguments that Your Honor  
19 has raised, that from our standpoint it appears that there were  
20 one of many members negotiating a plan, and under those  
21 standards they do not even qualify for the substantial  
22 contribution -- they do not meet the standard under 503(b).

23 So, accordingly, at this point we argue that their  
24 application should be denied. That's, again, taking -- not  
25 even taking into account the point that Your Honor mentioned,

1 looking at the hindsight. I mean, I think that was pretty much  
2 self-evident to everyone. No one disputes the fact that  
3 subsequent events essentially nullified any potential benefits  
4 that have occurred. Given that circumstance, I think it should  
5 tip the balance toward denial of this particular application.

6 As Your Honor mentioned, even under the standard, if  
7 you're looking at the time the deal was entered into, I don't  
8 think they qualify. But certainly taking into account the  
9 hindsight factor, which is really a major factor -- in fact,  
10 that is the most compelling characteristic of the 503(b) -- and  
11 looking back to see whether or not there's a benefit to the  
12 estate, that under that -- taking that into consideration,  
13 essentially whether or not they did or did not satisfy the  
14 benefit at the time is almost irrelevant.

15 THE COURT: Okay.

16 What do you have to say on that second point?

17 MR. GOLDBERG: On the second point, a couple of  
18 things, Your Honor. I think it goes -- the hindsight standard  
19 really doesn't -- or shouldn't work, for a couple of reasons,  
20 mostly policy-related. But, first, if we allow this to be  
21 governed by a hindsight standard, I think you have very  
22 negative policy implications for the conduct of Chapter 11  
23 cases. A substantial contribution claim or the agreement by a  
24 debtor not to oppose a substantial contribution claim is a  
25 valuable currency or chit that a debtor can often use in a



1 Chapter 11 case. It's a way of resolving objections; it's a  
2 way of acknowledging a party's contribution without having to  
3 somehow pay out cash in exchange for making a problem go away.  
4 This is part of what greases the skids during many Chapter 11  
5 cases.

6 And I think that a lot of the disputes that otherwise  
7 can be resolved by deferring them or putting them offline, if  
8 you will, to the substantial contribution issue are not going  
9 to go away if parties that enter into those agreements, or  
10 might otherwise enter into those agreements, know that it  
11 doesn't mean anything to have a substantial contribution claim  
12 if everything is going to be judged by perfect twenty-twenty  
13 hindsight.

14 What is the incentive for a party in the midst of a  
15 heavy dispute to say Okay, now we've made some changes and I'm  
16 going to make some concessions, and part of the concessions you  
17 make will be the agreement not to oppose or to grant a  
18 substantial contribution claim when I in effect have to become  
19 a guarantor of the economic value of that claim two years in  
20 the future when things turn out differently than we think they  
21 might due to circumstances that are completely unrelated to the  
22 substantial contribution claimant?

23 THE COURT: Well, in Granite Partners, Judge Bernstein  
24 talks about two different types of substantial contribution  
25 claims: One type is similar to the work that was done by the

1 trade committee, that I've already ruled on in this case, where  
2 basically they fill a gap that the retained professionals for  
3 the debtor and the creditors, meaning the equity committee,  
4 would normally fill but for some reason haven't. And it seems  
5 to me under those circumstances if you fill that gap, maybe you  
6 should be treated like they are where you just look at  
7 reasonableness at the time.

8 He has another category where people just do something  
9 really remarkable that has the effect of really benefiting  
10 everybody. And I think under those circumstances it really  
11 depends on it being something really remarkable, and if it  
12 isn't -- if it turns out not to have been a good -- a real  
13 benefit, I don't see how you'd have anything there.

14 And then there is of course the statute itself which  
15 talks about conferring a benefit in the case. And I read that  
16 as, since it says "in the case" as opposed to "to the estate",  
17 that it probably has some procedural aspect to it, or process  
18 aspect to it, which again sort of ties into were you acting  
19 like an estate professional.

20 But I guess that ties into the evidentiary showing, I  
21 guess, here, which is -- I'm just having a hard time seeing how  
22 these two entities actually were doing more than the committee.  
23 I mean, it sounds like, to me, they were excluded from the  
24 original negotiations. If they'd been involved in the original  
25 negotiations, I don't think they'd be entitled to an award

1 because they'd be just -- you know, they'd be sitting in.

2 MR. GOLDBERG: Well --

3 THE COURT: The committee was there.

4 MR. GOLDBERG: No, I'm not sure about that, Your  
5 Honor, really for two reasons: One, I think that if we had  
6 been allowed to participate certainly by virtue merely of the  
7 dollars represented by my clients, I don't think we would have  
8 had significant enough a role to dictate what the -- or to veto  
9 anything that the committee had agreed to; and then second, as  
10 counsel pointed out, we weren't merely another facet of the  
11 objections raised by the committee. We had a different form of  
12 relief in addition to the oppositions, but we were also seeking  
13 the appointment of an examiner to address some of the issues  
14 that were related to what -- the transactions that were subject  
15 to those motions, as well as the earlier matter. And I think  
16 certainly we did confer a benefit, or at least the estate  
17 received a benefit, but to the extent we elected as a result of  
18 this settlement not to prosecute that examiner motion --

19 THE COURT: See, that's where I have a real problem.  
20 I mean, that -- to me, that's the type of precedent that's  
21 really a bad one. If I were to basically say that because you  
22 withdrew your request for an examiner you made a substantial  
23 contribution, I mean, that opens the door to anyone in a case  
24 with more than five million dollars of public debt. Just --  
25 you know, it just -- it doesn't --

1 MR. GOLDBERG: No, I understand, and I'm not  
2 suggesting that that's the sole basis. But remember that that  
3 took place in this context --

4 THE COURT: Right.

5 MR. GOLDBERG: -- and that that -- and it's not just  
6 that we said here's what the statute said, we're entitled to an  
7 examiner, you know, give us money, we'll file the motion.

8 THE COURT: Right.

9 MR. GOLDBERG: That's not what happened. But we did  
10 withdraw that in the context of an improved deal that provided  
11 a benefit --

12 THE COURT: See, but, again --

13 MR. GOLDBERG: -- for --

14 THE COURT: -- I just don't -- that's where there's  
15 the disconnect. I don't see the proof of that. It may be the  
16 case that it was approved, but it just doesn't really -- it's  
17 not established.

18 And I actually do think that this issue shouldn't have  
19 come as a surprise today. The U.S. Trustee raised it in saying  
20 that the motion really doesn't say what the benefit was. And  
21 the motion responds but it doesn't -- it actually says "after  
22 several terms of the revised deal were clarified"; it doesn't  
23 even say "improved". The noteholders agreed to withdraw their  
24 objections. So I guess that's really ultimately the problem I  
25 have here.

1 I think, under certain circumstances, if there clearly  
2 was an improved deal negotiated, and if in effect you acted  
3 like the examiner in interrogating GM about all these issues,  
4 then I think that that would probably defeat hindsight. But I  
5 just don't see it here.

6 So on that basis, I'm going to deny the motion.

7 MR. GOLDBERG: Thank you, Your Honor.

8 THE COURT: For the record, I very recently, on May  
9 20th, set forth what I think is the proper standard for  
10 reviewing an application under Section 503(b)(3)(B) and (b)(4),  
11 and I'm going to rest on that explanation, except to note,  
12 again, since it's not all in the same place -- most of it  
13 appears at pages 109 through 115 of that transcript -- the  
14 additional observation that clearly Chapter 11 generally, but  
15 specifically this case, is a collective process.

16 And Congress has laid out various ways that the fees  
17 of parties involved in that process are paid, including under  
18 506(b) and 502, as set forth in the Travelers case, but that  
19 the burden for getting paid under 503(b)(3) in hundred-cent  
20 dollars is a high one. And on this record I don't see the  
21 demonstrable tangible benefit to the estate, because the  
22 improvements, if there were any, in the GM settlement, over and  
23 above those that had been negotiated by the creditors'  
24 committee with the debtor, that the movants here allege have  
25 been established, and my belief that the withdrawal of the

1 examiner motion, is not the type of demonstrable tangible  
2 benefit that Congress had in mind.

3 I think for the future that means that people may need  
4 to negotiate their settlements differently, more along the  
5 lines that the prior movants did, but that will raise a  
6 different type of response to that settlement. And in the  
7 future, under different circumstances, a court, including this  
8 court, might well agree with an objection by the U.S. Trustee  
9 to that type of settlement, which frankly was a fairly close  
10 call at the confirmation hearing when I didn't agree with the  
11 U.S. Trustee.

12 So I don't think that the agreement by the debtors and  
13 the committee to support a 503(b)(3) application is somehow  
14 more than -- or somehow makes it easier to establish a  
15 503(b)(3) request.

16 So, Mr. Masumoto, you should submit an order denying  
17 the objection.

18 MR. MASUMOTO: Very well. Thank you, Your Honor.

19 THE COURT: Thank you.

20 And, again, as far as the reasonableness of the fees  
21 is concerned, I didn't have a problem with the reasonableness.  
22 This is all on the analysis of benefit.

23 MR. GOLDBERG: Thank you, Your Honor.

24 THE COURT: Okay.

25 MR. MEISLER: Thank you, Your Honor. That concludes

1 today's hearing.

2 THE COURT: Okay.

3 MR. MEISLER: Thank you.

4 (Proceedings concluded at 2:44 PM)

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C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true  
and accurate record of the proceedings.

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Dena Page

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Date: July 2, 2010